



**DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING  
*ENFORCEMENT DIVISION*  
*DIRECTIVE***

**DIRECTIVE  
NUMBER  
400**

**DISTRIBUTION  
DATE  
October 1, 1998**

1. **SUBJECT: SETTLEMENT AGREEMENTS**
2. **PURPOSE:** To set forth the procedures to be followed when drafting settlement agreements used by the Department and establish the procedures to be used when the standard agreement is not acceptable to the respondent or complainant.
3. **BACKGROUND:** The Department of Fair Employment and Housing (DFEH) strives for uniformity in all aspects of case processing. It is imperative that settlement agreements be processed in a manner that is consistent and uniform in all of the District Offices.
4. **PROCEDURES:**
  - A. **Settlement Agreement Forms:**
    - 1) The Department uses a standard settlement agreement, DFEH-500-02. Whenever the complainant is not a signatory to the agreement, a DFEH-500-03 should be used.
    - 2) In the rare circumstance where a respondent or respondent's attorney insists on preparing the agreement, approval must be granted by the District Administrator. Such agreements must contain the last two paragraphs of DFEH-500-02 and must not contain any waiver language beyond the subject of the complaint being resolved.
  - B. **Confidentiality Language:**

The Department discourages confidentiality language in settlement agreements. The District Administrator may approve such language, but in doing so should consider the following issues:

- 1) DFEH's closed files are a matter of public record. Consideration therefore should be given to the burden created when there is a need to deviate from ordinary disclosure procedures.
- 2) Extreme care must be taken when crafting and approving confidentiality language. (Refer to Attachment 1 - "Alternate Confidentiality Language.")
- 3) Whenever a settlement agreement contains language pertaining to the complainant's or respondent's obligation to keep the settlement terms confidential, the following statement must also be included as a provision:

"The Department of Fair Employment and Housing has no liability as it pertains to the complainant's or respondent's obligations regarding the confidentiality provisions of this agreement."

**C. Waiver Language:**

The Department discourages settlement agreements which contain overly broad waiver language. Broad waivers are those which curtail the complainant's rights to pursue remedies for actions other than those alleged in the DFEH charge.

- 1) No agreement with restrictive waiver language will be signed by the Department without approval from the District Administrator and without first pursuing these alternatives:
  - a) Suggesting substitute language that narrows the waiver being requested by the respondent. (Refer to Attachment 2 - "Substitute Language for Release.")
  - b) Having the parties prepare a waiver as a totally separate agreement which is signed only by the complainant and the respondent.
  - c) Having the entire agreement signed only by the complainant and respondent. (If this occurs, the case can still be closed with Closing Category 07, 22, 33, 34, 50 or 52. This is an allowable deviation from the standards set in Directive 500, "Case Closing Categories and Procedures."

**NOTE:** Such an agreement is not subject to monitoring.

- 2) The District Administrator may accept waiver language when efforts at revision have failed but only with the concurrence of the assigned attorney.

**D. Settlement Terms:**

- 1) The terms of any settlement agreement should be clear, specific, and appropriate. All violations discovered by the Consultant (i.e., policies which are clearly in violation of Fair Employment and Housing Commission Regulations) should be addressed. The terms of the agreement must be stated with specificity and be free of ambiguity.
- 2) All agreements must specifically state the parties' intent in terms of **date(s)** by which specified acts must be performed, the names, titles, or groups of individuals to perform the acts, and, if appropriate, specifically which acts are to be performed.
- 3) Where affirmative or prospective relief is part of the provisions of a settlement agreement, monitoring language should be included. This language should be specific, including instructions on the **date** and to whom the respondent is to report their compliance (e.g., the named consultant, or District Administrator if the case is to go to monitoring).
- 4) Consultants should use the language contained in the "Negotiating Settlements" Chapter of the Consultant I Basic Training Manual and the Remedy section of the Case Analysis Manual in all settlement agreements.
- 5) In instances where the settlement provisions include the payment of a lump sum amount or back pay, **do not include** language regarding Internal Revenue Service (IRS) codes or exemptions, or any other restrictive language unless instructed to do so by a member of the Legal staff.

**E. Settlement Provisions For Extended Payments:**

District Office staff **will not** be a party to an installment or delayed payment settlement agreement.

**F. Settlement Signatures:**

- 1) Unless otherwise unavoidable, the complainant will sign the agreement first.
- 2) The Department representative always signs last.
- 3) If the settlement agreement is faxed to the parties, the Consultant must still obtain an original signature copy for the file.
- 4) Settlement agreements in cases involving **minors** as complainants should be signed by the **guardian ad litem**.

**G. Translation of Settlement Agreements for Non-English Speakers or Persons Who Are Deaf or Sight Impaired:**

- 1) Where a non-English speaking, deaf, or sight impaired complainant must have the agreement language and settlement provisions translated, the person providing the service, whether or not a DFEH representative, should complete a Translator's Certification (DFEH-600-36).
- 2) A signed copy of this form will be retained in the case file.
- 3) Where efforts to have the form completed by persons outside the Department are unsuccessful, such will be noted on the Case Diary.

**5. APPROVAL:**

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Nancy C. Gutierrez, Director

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Date

## **ALTERNATE CONFIDENTIALITY LANGUAGE**

Examples of acceptable settlement provisions relating to confidentiality might include the following:

- "The Department and complainant agree not to publicize the terms of this Agreement."
- "The Complainant agrees not to divulge the terms of this Agreement with individuals known to him/her to be incumbent or former employees of the company."
- "The Complainant will not publicize or circulate information regarding the terms and conditions of this Agreement."
- "The Department will abide by the confidentiality provisions of the Fair Employment and Housing Act as it relates to the manner in which this controversy has been resolved."
- "As a condition of settlement of this action, the Complainant and Respondent shall not publicize the amount that Respondent has agreed to pay Complainant or any other term of this Agreement. The Department agrees not to initiate publicity of this Agreement. However, if the Department receives any inquiry from a third party under the Public Records Act concerning settlement of this action, the Department agrees to notify Complainant and Respondent of such request prior to releasing such information."
- "Complainant and Respondent may respond to anyone who inquires regarding whether the above-referenced matter has been settled to their satisfaction and that the terms of the Agreement are not to be disclosed. This will not preclude disclosure of the terms of the Settlement Agreement to immediate family members, agents, and representatives."

## **SUBSTITUTE LANGUAGE FOR RELEASE**

- **Release Language:**

"Except as provided herein, each party to this Agreement agrees to release and forever discharge the other, its officers, employees, agents, accountants, attorneys, and all others acting for, under, or in concert with such party, past and present, of and from any and all claims, demands, actions, causes of actions, obligations, damages, liabilities, loss, costs or expenses, including attorney's fees, or any kind or nature whatsoever, past or present, ascertained or unascertained, whether or not known, suspected or claimed relating to illegal discrimination, as referenced in the above-described complaint."

**NOTE:** This release, set forth above, does not apply to any acts of retaliation or conduct that may occur after this Settlement Agreement is entered into by the parties.

- **Where appropriate, the following should be included:**

"This release does not extend to any claim filed under the California Worker's Compensation laws, and specifically, WCAB Case No. \_\_\_\_."

- **Similar language should be used if there is another pending claim, such as an Unemployment Insurance Appeal, which is not being dropped as a result of the DFEH settlement.**